

Introduced by Senator Lara
(Coauthors: Senators Anderson and Vidak)
(Coauthor: Assembly Member Mark Stone)

December 1, 2014

An act to add Section 1708.5.5 to the Civil Code, and to amend Section 1106 of the Evidence Code, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 14, as introduced, Lara. Nonconsensual sexual intercourse: sexual history: minors.

Under existing criminal law, unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is under 18 years of age. Existing civil law makes a person who commits a sexual battery, as defined, upon another liable to that person for damages and authorizes a court to award equitable relief, as specified.

This bill would, under civil law, define nonconsensual sexual intercourse as an act of sexual intercourse between an adult and a person who is not the spouse of the adult, if the person is under 18 years of age.

Under existing law, in any civil action alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, opinion evidence, reputation evidence, and evidence of specific instances of plaintiff's sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the plaintiff or the absence of injury to the plaintiff. Under existing case law, the elements of a civil cause of action for negligence are the existence of a duty (the obligation to other persons to conform to a standard of care to avoid unreasonable risk of harm to them); breach of that duty (conduct below the standard

of care); causation (between the defendant's act or omission and the plaintiff's injuries); and damages.

This bill would, in any negligence civil action, prohibit the admissibility of any evidence of a minor plaintiff's sexual history by the defendant in order to prove consent by the minor plaintiff.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1708.5.5 is added to the Civil Code, to
2 read:

3 1708.5.5. Nonconsensual sexual intercourse is an act of sexual
4 intercourse between an adult and a person who is not the spouse
5 of the adult, if the person is a minor. For purposes of this section,
6 a "minor" is a person who is under 18 years of age and an "adult"
7 is a person who is at least 18 years of age.

8 SEC. 2. Section 1106 of the Evidence Code is amended to read:

9 1106. (a) (1) In any civil action alleging conduct which
10 constitutes sexual harassment, sexual assault, or sexual battery,
11 opinion evidence, reputation evidence, and evidence of specific
12 instances of plaintiff's sexual conduct, or any of ~~such~~ *that* evidence,
13 is not admissible by the defendant in order to prove consent by the
14 plaintiff or the absence of injury to the plaintiff, unless the injury
15 alleged by the plaintiff is in the nature of loss of consortium.

16 (2) *Notwithstanding any other law, in any negligence civil*
17 *action, no evidence of a minor plaintiff's sexual history is*
18 *admissible by the defendant in order to prove consent by the*
19 *plaintiff. For purposes of this paragraph, a "minor" is a person*
20 *who is under 18 years of age.*

21 (b) ~~Subdivision~~ *Paragraph (1) of subdivision* (a) shall not be
22 applicable to evidence of the plaintiff's sexual conduct with the
23 alleged perpetrator.

24 (c) If the plaintiff introduces evidence, including testimony of
25 a witness, or the plaintiff as a witness gives testimony, and the
26 evidence or testimony relates to the plaintiff's sexual conduct, the
27 defendant may cross-examine the witness who gives the testimony
28 and offer relevant evidence limited specifically to the rebuttal of
29 the evidence introduced by the plaintiff or given by the plaintiff.

1 (d) ~~Nothing~~ *Except as provided in paragraph (2), nothing* in
2 this section shall be construed to make inadmissible any evidence
3 offered to attack the credibility of the plaintiff as provided in
4 Section 783.

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